

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 03-11811-RWZ

JAMES H. HART

v.

VERIZON COMMUNICATION, INC.

Memorandum of Decision

March 9, 2004

ZOBEL, D.J.

Plaintiff James Hart was employed by defendant Verizon Communication, Inc. from December 6, 1999 to December 13, 2001. He had numerous hostile encounters with his co-workers during that time. After one such episode, he was suspended and then terminated after he failed to return to work. He subsequently filed a Complaint in this Court against defendant and 23 individual co-workers, supervisors and managers. He alleged several claims stemming from his two years of employment with defendant, including claims for sexual harassment, and intentional and negligent infliction of emotional harm. On September 11, 2002, this Court granted defendant's motion to dismiss all of the individuals and all of the claims against defendant Verizon except for the sexual harassment claims under Title VII, 42 U.S.C. § 2000e-2(a)(1).

Notwithstanding his pending lawsuit, plaintiff filed *another* Complaint against defendant in Suffolk Superior Court on July 31, 2003, which was removed to this Court. He alleges nine counts, most of which are premised on his interpretation of defendant's

Code of Business Conduct (“Code”): 1) breach of implied covenant of good faith and fair dealing, 2) fraud and misrepresentation, 3) intentional and negligent infliction of emotional distress from sexual and other harassment, 4) negligent misrepresentation, 5) “unjust dismissal because plaintiff was sexually harassed,” 6) sexual harassment in violation of Mass. Gen. Laws ch. 151B and 214 § 1C, 7) “irreparable harm,” 8) “unjust dismissal,”¹ and 9) breach of contract. Plaintiff essentially alleges that defendant selectively enforced the “rules” under the Code against him, and that defendant violated the Code by allowing him to be sexually harassed, which led to his constructive discharge. Plaintiff moves to remand. Defendant moves to dismiss. On December 17, 2003, after a hearing on the motion to remand, the Court ordered further briefing. While the motions were pending, plaintiff’s sexual harassment claim in his earlier case went to trial and the jury rendered a verdict for defendant.

A. Plaintiff’s Motion to Remand

“Section 301(a) of the Labor Management Relations Act of 1947 (“LMRA”) provides federal jurisdiction over ‘[s]uits for violation of contracts between an employer and a labor organization.’” Henderson v. Merck & Company, Inc., 998 F. Supp. 532, 536 (E.D. Penn. 1998) (citing 29 U.S.C. § 185(a)). Thus, when the resolution of claims necessarily requires an interpretation of the terms of the governing collective bargaining agreement (“CBA”), federal jurisdiction is proper. Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 213, 105 S.Ct. 1904, 1912 (1985). The parties do not dispute that plaintiff was a union member at all relevant times. Defendant asserts that the CBA governs and

¹ Specifically, plaintiff alleges that his request to be transferred from the building due to sexual harassment was denied.

since plaintiff's claims require interpretation of the CBA, removal was proper. Plaintiff responds that the CBA contains no pertinent articles or by-laws relating to his claims.

Plaintiff's Complaint focuses solely on defendant's Code. However, the Code explicitly states that it "is not an employment contract in any form" and "does not give [the recipient] rights of any kind." VERIZON COMMUNICATION, INC., OUR CODE OF BUSINESS CONDUCT: CONNECTING THROUGH INTEGRITY (2001) at iv.² It further directs employees who are union members to contact their representatives concerning issues covered by the CBA. *Id.* at 4. Therefore, given that the only contract between plaintiff and defendant is the CBA, resolution of plaintiff's claims, as alleged, require interpretation of the CBA.

More specifically, plaintiff's claims concerning defendant's selective enforcement of the rules require interpretation of Articles 2, 24A, and 27 of the CBA. Article 2 (Non-Discrimination) states that the Company shall not unlawfully discriminate against any employee, because of, among other things, sex. (Def.'s Opp'n to Pl.'s Mot. To Remand Ex. A2 at 3). Article 24A (Discipline and Discharge) states, in part, that "[t]he Company has the sole right to discharge an employee for just cause, and the sole right to discipline the employee." (Def.'s Opp'n to Pl.'s Mot. To Remand Ex. A2 at 48). Article 27 (Management Rights) provides that "[s]ubject only to the express limitations contained in this Agreement, the Company retains the exclusive right to manage its business including (but not limited to) the right to determine the methods and means by which its operations are to be carried on, to assign and direct the work force and to

² Plaintiff filed a copy of the Code independently from any papers.

conduct its operations in a safe and effective manner.” (Def.’s Opp’n to Pl.’s Mot. To Remand Ex. A2 at 56). Article 12 (Transfer and Promotion Procedures) is relevant to plaintiff’s claim concerning the denial of his request for transfer. Finally, Article 24 (Grievance Procedure) and Article 25 (Arbitration) provide procedures by which to resolve employee issues. (Def.’s Opp’n to Pl.’s Mot. To Remand Ex. A2 at 47 and 51).

With the exception of his allegations of sexual harassment, plaintiff’s claims, as pled in the Complaint, require interpretation of the CBA and are therefore preempted by Section 301 of the LMRA. Plaintiff’s Motion to Remand is denied.

B. Defendant’s Motion to Dismiss

Where a federal court, acting under its federal question jurisdiction, renders a final judgment in a case, the application of *res judicata* as to a subsequent case depends on the federal law standard. Kale v. Combined Insurance Co. of America, 924 F.2d 1161, 1164 (1st Cir. 1991). The doctrine of *res judicata* applies when there is: (1) a final judgment on the merits in the earlier case, (2) identity of the cause of action, and (3) identity of the parties. Id. Identity of the cause of action exists when the two lawsuits stem from the same facts. Id. at 1166. “[F]ederal law stipulates that all claims which are ‘part of the same cause of action’ are extinguished, whether or not actually asserted in the original action.” Id. (citations omitted).

Res judicata bars the present action. First, a final judgment has been rendered in plaintiff’s earlier lawsuit: this Court dismissed all of the counts except for that alleging sexual harassment, which went to trial. Second, both complaints arise from the same hostile encounters during plaintiff’s two years of employment with defendant. Third, the

parties are the same.

Therefore, defendant's motion to dismiss is allowed and judgment is entered accordingly.

DATE

/s/ Rya W. Zobel
RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE